



Botswana

Country Reports on Human Rights Practices - [2004](#)

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Botswana is a longstanding multiparty democracy. Constitutional power is shared between the President and a popularly elected National Assembly. On October 30, Festus Mogae, who has led the Botswana Democratic Party (BDP) since 1998, was reelected President in parliamentary elections deemed generally free and fair; however, there were opposition complaints of unequal access to coverage by state-owned television. The BDP, which has held a majority of seats in the National Assembly continuously since independence, won 44 of 57 National Assembly seats. The Government generally respected the constitutional provisions for an independent judiciary; however, a shortage of judges resulted in a large backlog of cases.

The Botswana Defense Force, which is under the control of the Defense Council within the Office of the President, has primary responsibility for external security, although it assisted with domestic law enforcement on a case-by-case basis. The Botswana Police Service (BPS) has primary responsibility for internal security. The civilian Government maintained effective control of the security forces. Some members of the security forces, in particular the police, reportedly committed human rights abuses.

The economy of the country, which had a population of 1.7 million, was market oriented with strong encouragement for private enterprise through tax benefits. Approximately 32 percent of the labor force worked in the informal sector, largely subsistence farming and animal husbandry. Rural poverty remained a serious problem, as did a widely skewed income distribution. From 2002 to 2003, gross domestic product (GDP) grew by 6.7 percent, according to the Bank of Botswana. Diamond exports provided approximately 75 percent of export income, 50 percent of government revenues, and 33 percent of GDP. The high incidence of HIV/AIDS strained government finances and decreased productivity.

The Government generally respected the human rights of its citizens; however, there were problems in several areas. Police reportedly beat or otherwise mistreated criminal suspects on occasion to obtain evidence or coerce confessions. Prison conditions were poor and possibly life threatening. The judicial system did not provide timely fair trials due to a serious backlog of cases. The Government continued to dominate domestic broadcasting and limited freedom of the press. Some citizens, including groups not numbered among the eight ethnic groups of the majority Tswana nation, remained marginalized in the political process. Violence and discrimination against women remained serious problems. Societal discrimination against ethnic San (Basarwa) and persons with HIV/AIDS were problems. Child abuse was a problem. Trade unions continued to face some legal restrictions, including those against the right to strike, and the Government did not always ensure that labor laws were observed in practice; however, during the year, the Government recognized the right of civil servants to organize.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no politically motivated killings by the Government or its agents; however, on March 19, prison officials shot and killed an illegal immigrant as he attempted to escape from the Center for Illegal Immigrants. Officials reportedly fired 11 warning shots first. The shooting triggered a prison riot in which one person was injured seriously (see Section 2.d.). The results of a government investigation into the incident had not been released by year's end.

On November 13, police shot and killed a suspected criminal after he threatened the officers with a machete in an attempt to escape arrest. The fugitive, who was wanted for theft, had escaped from custody 4 days earlier.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution explicitly prohibits such practices; however, there were reports that on occasion, police used beatings and other forms of abuse to obtain evidence or elicit confessions. Coerced confessions and evidence gathered through coercion or abuse are inadmissible in court.

On September 8, the independent media reported that a group of bank employees had filed a suit against the Government alleging that police officers had tortured them to extract information in connection with a fraud investigation; police denied the allegations. The employees, who charged that interrogators had suffocated some suspects with plastic bags and stripped, bound, and kicked one suspect, had not filed a police report by year's end. No further information was available.

Customary courts continued to impose corporal punishment in the form of lashings on the buttocks, generally against young offenders in villages for crimes such as vandalism, theft, and delinquency. During the year, the Government denied foreign media charges that illegal Zimbabwean immigrants in the country had been subjected to torture and killings; however, the Government noted that the law provides for corporal punishment and applies it to all, including foreigners and citizens of the country.

Prison conditions remained poor and possibly life threatening. The 24 prisons across the country had a capacity of 3,870 inmates, but held 5,864 as of August 27. Overcrowding, which was worse in men's prisons, constituted a serious health threat because of the country's high incidence of HIV/AIDS and tuberculosis. Rape between inmates occurred. During the first 8 months of the year, 47 detainees died following long illnesses, according to the Government. HIV/AIDS testing and the U.N. Development Program (UNDP) peer counseling were available to all prisoners; however, prison officials still lacked reliable statistics on the HIV infection rate within the prison population. The Prison Commissioner has the authority to release terminally ill prisoners who are in the last 12 months of their sentences and to allow citizen prisoners with sentences of 12 months or less to perform "extramural" labor. From January through August, the Government released 587 prisoners under the extramural labor program. Foreign prisoners were required to serve their entire sentences.

The Prisons Act makes it illegal for prison officials to mistreat prisoners. The Department of Prisons is required to forward to police allegations of the mishandling of prisoners by prison officials.

The March 19 shooting to death by prison guards of an inmate attempting to escape triggered a riot that resulted in injuries (see Section 1.a.).

Men were held separately from women, and juveniles generally were held separately from adults; however, some juveniles were held with adult prisoners due to overcrowding or requests by family members to facilitate visitation. Pretrial detainees were held in the same facilities as convicted prisoners. The planned opening during the year of a new juvenile prison did not occur because of construction delays.

The Prisons Act provides for a governmental visiting committee for each prison, the members of which are appointed by the Minister of Labor and Home Affairs. Members of these committees serve 3-year terms, must visit their prison four times a year, and issue a report both to the Commissioner of Prisons and the Minister of Labor and Home Affairs. These reports generally were not released to the public. During the year, the committees visited each prison quarterly.

The Prisons Act grants relatives, lawyers, magistrates, and church organizations the right to visit prisoners for "rehabilitative purposes"; however, the Commissioner of Prisons has the authority to decide whether domestic and international human rights organizations may visit. Independent monitoring of prison conditions by human rights groups, the media, or the International Committee of the Red Cross (ICRC) generally was allowed if these organizations sought permission from the Commissioner of Prisons. However, following the March 29 shooting of an inmate attempting to escape from the Center for Illegal Immigrants, the Botswana Center for Human Rights was denied permission to visit due to an ongoing investigation of the incident; a delegation of EU ambassadors subsequently visited the Center. The ICRC visited some prisons in September.

d. Arbitrary Arrest or Detention

The Constitution prohibits arbitrary arrest and detention, and the Government generally observed these prohibitions in practice.

There were approximately 7,000 police officers in the country. National and local police do not generally carry firearms. Corruption was not common, and impunity generally was not a problem. According to the Government, 32 police officers were convicted of various criminal acts during the year: 5 were discharged for discreditable conduct, 3 were reprimanded for the same offense, and 7 were charged with official corruption during the year.

Suspects must be informed of their legal rights upon arrest, including the right to remain silent. Detainees must be charged before a magistrate within 48 hours. A magistrate may order a suspect held for 14 days through a writ of detention, which may be renewed every 14 days. Detainees have the right to contact a family member and to hire attorneys of their choice, but in practice, most were unable to afford legal counsel. Poor police training and poor communications in rural villages made it difficult for detainees to obtain legal assistance, and authorities did not always follow judicial safeguards. The Government did not provide counsel for the indigent, except in capital cases. Most citizens charged with noncapital offenses were released on their own recognizance; some were released with minimal bail. Detention without bail was highly unusual, except in murder cases, where it is mandatory. Incommunicado detention was rare, except for prisoners awaiting execution. Constitutional protections

were not applied to illegal immigrants, although the constitutionality of denying them due process has not been tested in court.

Pretrial detention was prolonged in numerous cases. The average wait in prison between the filing of charges and the start of a trial was approximately 6 months. The Government attempted to alleviate the backlog of cases by temporarily hiring more judges; however, the backlog of cases persisted.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice.

The judiciary consists of both a civil court (including magistrates' courts, a High Court, and a Court of Appeal) and a customary (traditional) court system.

The law provides for the right to a fair trial; however, the civil courts remained unable to provide timely, fair trials due to severe staffing shortages and a backlog of pending cases. Most trials in the regular courts were public, although trials under the National Security Act may be held in secret. There was no jury system. Those charged with noncapital crimes were tried without legal representation if they could not afford an attorney. As a result, many defendants were not informed of their rights in pretrial or trial proceedings. There is a presumption of innocence, and defendants have the right to appeal. The Botswana Center for Human Rights provided free legal services, but its capacity was limited. The University of Botswana Legal Assistance Center provided free legal services in civil, but not criminal, matters.

On October 6, the two San convicted of a 1995 murder appeared before the High Court to seek a stay of execution; the Court had not rendered a decision by year's end.

Most civil cases were tried in customary courts, under the authority of a traditional leader. These courts handled minor offenses involving land, marital, and property disputes. Foreigners may be tried in customary courts. In customary courts, the defendant does not have legal counsel, and there were no precise rules of evidence. Tribal judges, appointed by the tribal leader or elected by the community, determine sentences, which may be appealed through the civil court system. The quality of decisions reached in the customary courts varied considerably. In some cases, tribal judges may mete out sentences such as public lashings (see Section 1.c.). In communities where chiefs and their decisions were respected, plaintiffs tended to take their cases to the customary court; otherwise, persons sought justice in the civil courts.

There is a military court system; civilians are not tried in military courts.

There were no reports of political prisoners.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The Constitution prohibits such actions, and the Government generally respected these prohibitions in practice; however, in 2002, the Government forcibly resettled the San out of the Central Kalahari Game Reserve (CKGR). Government officials maintained that the resettlement program was voluntary and necessary to reduce the cost of providing public services and to minimize human impact on wildlife. The Government made no effort to relocate the few San who returned to the CKGR. At year's end, ethnic San remained in resettlement sites after the Government forced them to abandon their ancestral communities within the CKGR in 2002 (see Section 5).

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and the Press

The Constitution provides for freedom of speech and of the press, and the Government generally respected freedom of speech in practice; however, the Government attempted to limit freedom of the press and continued to dominate domestic broadcasting. The Government occasionally censored stories or news sources that it deemed undesirable. The Government did not restrict academic freedom.

The Botswana Press Agency, owned and operated by the Government, provided most of the information found in the media through the Daily News newspaper (distributed nationwide at no cost) and two FM radio stations, Radio Botswana and Radio Botswana 2. News coverage in the state-owned media generally supported government policies and actions. The Daily News also published general coverage of current events and issues and included a second front page in Setswana, the most commonly spoken language.

The independent press was small but vigorous and had a long tradition of candid discourse. Reporters actively covered the political arena and frequently criticized the Government and the President without fear of closure. The circulation of privately owned print media continued to be limited primarily to the main cities and towns: 8 privately owned weekly newspapers and 1 daily newspaper were published in Gaborone; 1 privately owned weekly newspaper was published in Francistown; and 11

privately owned monthly magazines were published nationally.

Radio remained the most important medium of public communication. Two private radio stations, Yarona FM and Gabz FM, broadcast in 5 of the country's 10 largest towns; state owned radio continued to be the only domestic radio service broadcasting to the entire country. The law provides for the issuance of broadcast licenses to private companies and provides copyright protection of broadcast material; the autonomous National Broadcasting Board (NBB) granted the licenses routinely. On December 21, the NBB licensed state-owned Radio Botswana.

BTV broadcast south from Gaborone to Lobatse, north to Serowe and Francistown, and was scheduled to be available throughout the country within a few years.

The privately-owned Gaborone Broadcasting Company (GBC) broadcast mostly foreign programming and was the only other television station operating in the country. GBC broadcasts reached viewers only in the capital area.

Independent radio and television broadcasts from neighboring South Africa were received easily in border areas. Satellite television from a South African-based company was available readily, although its cost prevented many persons from subscribing to the service.

During the year, the media and opposition parties charged that the Government pressured state-owned media to minimize coverage of opposition parties.

In November 2003, Minister of Communication, Science, and Technology Boyce Sebetela announced that due to resource constraints, BTV would restrict coverage of campaign events. BTV subsequently covered any event at which the President or Vice President presided, including campaign events, which prompted opposition criticism of inequitable access to the media. As a result of the criticism, BTV expanded its coverage to include all presidential candidates.

During the year, Radio Botswana cancelled a program that reviewed lead stories carried by independent newspapers each morning. The Government charged that the radio program was "unsustainable"; however, journalists attributed the cancellation to Minister Sebetela's desire to ensure BDP-friendly programming.

The Government's November 2003 suspension of Masa-a-sele, a radio call-in program, remained in effect at year's end; the Government cited the program's content and use of profanity as the reason for the suspension.

Government officials sometimes complained of bias in the private press; however, government officials and other public figures have recourse to the courts if they believe that they have been libeled. Libel is a civil law matter; there are no criminal libel laws.

The Government did not restrict Internet usage.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly and association, and the Government generally respected these rights in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice.

For a more detailed discussion, see the [2004 International Religious Freedom Report](#).

d. Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice.

In 2002, the Government required the San to relocate from the CKGR to one of three designated settlements outside of the reserve (see Sections 1.f. and 5). Visitors to the Reserve, including relocated former residents, had to register with Department of Wildlife officials to obtain a permit to enter the CKGR. Estimates of the San population within the Reserve varied between 50 and 200 as members of the community moved in and out of the CKGR during the year.

The law prohibits forced exile, and the Government did not use it.

The law provides for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol, and the Government has established a system for providing protection to refugees. In

practice, the Government generally provided protection against refoulement, the return of persons to a country where they feared persecution, and granted refugee status or asylum. The Government cooperated with the office of the U.N. High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees and asylum seekers. During the year, the Government also provided temporary protection to approximately 550 individuals who may not qualify as refugees under the 1951 Convention/1967 Protocol.

The Government held newly arrived refugees and asylum seekers in the Center for Illegal Immigrants in Francistown until the Refugee Advisory Committee, a governmental body whose Chairperson is the District Commissioner of Francistown, interviewed them; UNHCR was present with observer status at such interviews. Once persons were granted refugee status, the Government transferred them to the Dukwe Refugee Camp until their resettlement or voluntary repatriation. Refugee applicants who were unsuccessful in obtaining asylum also were allowed to remain at Dukwe until the Government referred their cases to the UNHCR for resettlement.

As of August, the Center for Illegal Immigrants, which has a capacity of 504, held 236 illegal immigrants. The UNHCR opposed the detention of asylum seekers at the Center on the grounds that asylum seekers should not be held in detention facilities. Concern about conditions increased after the March 19 shooting of an illegal immigrant as he tried to escape, reportedly because he had been detained without a hearing for much longer than the 28 days mandated by law (see Section 1.a.).

During the year, approximately 4,800 illegal immigrants from Zimbabwe were repatriated each month. Unlike during the previous year, there were no reports that security forces used excessive force in repatriating Zimbabweans. The few Zimbabweans who requested asylum or refugee status were allowed to apply for official status.

At year's end, there were more than 3,000 refugees at Dukwe, primarily from Namibia, Angola, and Somalia. Refugees are permitted to reside outside Dukwe Refugee Camp with a permit from the Office of the President. An estimated 500 refugees, including a number of students, were living elsewhere in the country.

The Government, UNHCR, and the Government of Angola signed a tripartite repatriation agreement during the year to facilitate the voluntary return of an estimated 1,200 Angolan refugees living in Dukwe camp; the registration process for the refugees was ongoing at year's end. By year's end, 60 families had returned to Angola; another 153 individuals had registered for repatriation.

The country continued to host approximately 1,200 refugees from the Caprivi Strip in neighboring Namibia. Many were associated with the Caprivan separatist movement. Unlike in the previous year, none chose to be voluntarily repatriated.

In February, the Namibian High Court ordered the release of 13 of the 120 detainees charged with treason; the Judge ruled that their extradition from Botswana and Zambia did not conform to the extradition procedures in either country. The suspects were subsequently released and rearrested on the same charges. In July, the Namibian Supreme Court overturned the High Court's decision; criminal proceedings for all 120 were scheduled to resume in January 2005.

In July, the Court of Appeal ruled against the Namibian Government's request to have 13 alleged Caprivi secessionists extradited to face charges of murder and high treason. During the year, 2 of these individuals died of natural causes; the remaining 11 were being held at the Center for Illegal Immigrants while the UNHCR reviewed their refugee claims.

The seven refugees who were arrested on related charges of high treason in Namibia after being forcibly returned from the country in December 2003 remained in detention at year's end; their trial was scheduled for early 2005.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal adult (18 years of age) suffrage. The President is elected by the National Assembly and is limited to two 5-year terms in office. The BDP has held a majority of seats in the National Assembly and has controlled the presidency continuously since independence. Membership in the dominant BDP conferred some advantages, mostly in the form of government employment or provision of government services, such as water and utilities.

On October 30, National Assembly elections were held: The BDP increased its majority to 44 of 57 seats; the Botswana National Front (BNF) won 12 seats; and the Botswana Congress Party (BCP) won 1 seat. Redistricting prior to the parliamentary elections increased the number of competitive seats in the National Assembly from 44 to 57; 4 additional members are appointed by the President, bringing the total number of National Assembly seats to 61. The elections generally were regarded as free and fair by domestic and international observers; however, BDP candidates had preferential access during much of the campaign to state-owned television. Reports of large anonymous campaign contributions to the ruling party, particularly by international diamond interests, resulted in public calls for greater transparency in political party funding.

The House of Chiefs, an advisory body with limited powers, was restricted constitutionally to the eight principal ethnic groups of the majority Tswana ethnic group and four elected chiefs representing smaller ethnic groups, including the Bakalanga, Balozi, Hambukushu, and Bakgalagadi; other groups such as the San, Ovaherero, or Bayei consequently were not represented. Given

the limited authority of the House of Chiefs, the impact of excluding other groups of citizens largely was symbolic, but some nonethnic Tswana viewed it as important in principle. No action to change this policy had been taken by year's end.

There were 14 local councils, but they had no fiscal autonomy and relied on the central Government for revenue.

During the year, the Government continued its efforts to combat public corruption. On August 13, the Judicial Commission of Inquiry into State Land Allocations published a report that found numerous irregularities in the allocation of public land.

On September 22, the Directorate on Corruption and Economic Crime (DCEC) marked its 10th anniversary with a 2-day conference on corruption and how to combat it. Participants openly debated whether the DCEC was sufficiently independent, how to institute transparency in political party funding, and how to ensure that prominent persons in the public and private sectors were not exempt from prosecution for corrupt practices.

There are no laws that compel the Government to disclose information to the public upon request.

There were 7 women in the 61-seat National Assembly, 5 women in the 19-seat Cabinet, and 3 female justices in the 13-seat High Court. In 2003, the first woman in the country's history was elected chairperson of the House of Chiefs, and another woman became regent of the Batawana tribe.

The Constitution recognizes only the eight principal ethnic groups of the Tswana nation; however, members of ethnic groups not recognized in the Constitution participated actively in the Government, particularly members of the Kalanga and Bakalagadi ethnic groups. During the year, 17 members of minority ethnic groups held seats in the National Assembly, and 8 held seats in the Cabinet.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups, including the Botswana Center for Human Rights, generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials usually were cooperative and responsive to their views.

The Government cooperated with the UNHCR and UNICEF, as well as other international organizations, and the ICRC visited during the year (see Section 1.c.).

There is an independent, autonomous ombudsman who handles human rights and other issues; the Government generally cooperated with the ombudsman.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The Constitution prohibits governmental discrimination on the basis of ethnicity, race, nationality, creed, sex, or social status, and the Government generally respected these provisions in practice. However, neither the Constitution nor the law prohibits discrimination by private persons or entities. There was societal discrimination against women, persons with disabilities, persons with HIV/AIDS, and minority ethnic groups, particularly the San, who lived in remote locations where access to education, public services, employment, and land is extremely limited.

Women

The law does not prohibit domestic violence against women, and it remained a serious problem. Under customary law and in common rural practice, men have the right to "chastise" their wives. Greater public awareness and improved legal protection have resulted in increased reporting of domestic violence and sexual assault; however, police rarely were called to intervene in such cases. During the year, the Police Service took steps to increase privacy at police stations to encourage victims of domestic abuse to report such incidents.

Rape was another serious problem, especially given the high incidence of HIV/AIDS. During the year, 1,386 incidents of rape were reported. By law, the minimum sentence for rape is 10 years increasing to 15 years with corporal punishment if the offender is HIV-positive, and to 20 years with corporal punishment if the offender knew his or her HIV-positive status. A person convicted of rape is required to undergo an HIV test before being sentenced; however, the test did not determine if the person was HIV positive at the time of the crime. Police lacked basic investigative techniques in rape cases. The law does not address marital rape; however, in August 2003, a magistrate dismissed a case of alleged marital rape on the grounds that the marriage contract implies consent, making rape impossible unless a husband and wife were legally separated. The plaintiff, who had sought refuge in a women's shelter, had been abducted and raped repeatedly by her husband.

Prostitution is illegal but was widespread throughout the country.

Sexual exploitation and harassment continued to be problems with men in positions of authority, including teachers, supervisors, and older male relatives who pressured women and girls to provide sexual favors.

Women legally enjoyed the same civil rights as men; however, in practice, societal discrimination persisted. A number of traditional laws enforced by tribal structures and customary courts restricted women's property rights and economic opportunities. A woman married under traditional law or in "common property" was held to be a legal minor and required her husband's consent to buy or sell property, apply for credit, and enter into legally binding contracts. Under the law, women married under an intermediate system, referred to as "in community of property", were permitted to own immovable property in their own names. Moreover, the law also stipulates that neither spouse can dispose of joint property without the written consent of the other party. Women increasingly exercised the right to marriage "out of common property", in which case they retained their full legal rights as adults. Discrimination against women was most acute in rural areas, where women engaged primarily in subsistence agriculture had few property rights. Polygyny was legal under traditional law with the consent of the first wife, but it rarely was practiced.

The Government and local nongovernmental organizations (NGOs) focused on constructive methods to address discrimination against women in the areas of marital power, legal disabilities, and proprietary consequences of marriage under common law, customary law, and the Married Persons Property Act. On December 8, the President signed into law the Abolition of Marital Powers Act, which established equality of control over the joint estates of marriages and equal guardianship of parents over minor children. The Act also removes the domicile of husbands and fathers as the grounds for establishing the domicile for wives and minor children. Marriage laws set the marriage age for men and women at 18 years.

Well-trained urban women had growing entry- and mid-level access to white collar jobs, but the number of opportunities decreased sharply as they rose to senior management.

Young women did not have access to military training.

The Government and NGOs met regularly to implement the long-term plan of action described in the National Policy on Women. The Women's Affairs Department helped support a number of NGOs during the year, and the Department provided financial assistance for legal aid in cases of domestic violence and defilement.

Children

The rights of children are addressed in the Constitution and the Children's Act, and the Government remained committed to the protection of these rights. The Government continued to allocate the largest portion of its operating expenditures to the Ministry of Education and the second largest portion to the Ministry of Local Government, which distributed books, food, and materials for primary education. Under the law, the country has a court system and social service apparatus designed solely for juveniles.

During the year, the Government expanded its provision of free primary education for children from 7 years to 10 years, although attendance was not compulsory. Approximately 88 percent of children attended school, and approximately 30 percent completed secondary school, according to the Government. Girls and boys attended school at similar rates. School attendance and completion rates were highest in urban areas and lowest in remote rural areas, especially those inhabited chiefly by the San. The literacy rate was 81 percent: 82 percent for females and 80 percent for males.

UNAIDS estimated that 37.4 percent of persons between the ages of 15 and 49 were infected with HIV/AIDS. UNICEF reported there were approximately 112,000 orphans in the country, due largely to deaths from HIV/AIDS; however, 28 percent of babies born from HIV positive mothers were protected from the virus, largely as a result of the Prevention of Mother to Child Transmission Program. As of December, the Government had registered approximately 47,000 orphans. Once registered, orphans may receive food baskets and school uniforms. Many children, mostly believed to be orphans, became beggars in urban areas, and some became prostitutes. Relatives continued to deny inheritance rights to orphans.

Sexual abuse of students by teachers was a problem. Reports of rape and sexual assault of young women and cases of incest and defilement of young girls appeared with greater frequency in the news. The increasing number of HIV/AIDS orphans contributed to an increase in incest. The law considers incest a punishable act only if it occurs between blood relatives, leaving children unprotected from incestuous acts performed by step parents, caregivers, and the extended family. The age of sexual consent was 16. Child prostitution and pornography were criminal offenses, and the law stipulates a 10-year minimum sentence for defilement of persons under 16 years of age. In view of the belief held by some persons in southern Africa that intercourse with a virgin was a cure for HIV/AIDS, intergenerational sex (sexual relations between older men and girls) and the problems of teenage pregnancy caused by older men continued to receive extensive media attention during the year.

There were reports of child labor (see Section 6.d.).

Trafficking in Persons

The law does not prohibit trafficking in persons, although penal code provisions cover such related offenses as abduction and kidnapping, slave trafficking, compulsory labor, and procuring women and girls for the purpose of prostitution; however, there

were unconfirmed reports that women were trafficked through the country to other destinations. During the year, there were reports that poor rural children were taken from their homes under false pretenses and forced to work as maids or cattle herders. There were reports that some children who were orphaned by HIV/AIDS became prostitutes in urban areas (see Section 5, Children). Traffickers charged with kidnapping or abduction could be sentenced to 7 years' imprisonment.

During the year, the Government took steps to develop a national plan of action to address trafficking. In February, the Government and UNICEF established a task force on trafficking chaired by the police, and the Ministry of Foreign Affairs and International Cooperation convened a meeting on trafficking with other government agencies, NGOs, and foreign diplomats. Local police in cooperation with their South African counterparts continued an intensive program to increase border controls.

Persons with Disabilities

There was some discrimination against persons with disabilities, and employment opportunities remained limited. The Government has a national policy that provides for integrating the needs of persons with disabilities into all aspects of government policymaking; however, the Government did not mandate access to public buildings or transportation for persons with disabilities. The Government funded NGOs that provided rehabilitation services and supported small-scale work projects by workers with disabilities.

Indigenous People

The San, who now chiefly inhabit the Kalahari Desert, are the earliest known inhabitants of the country. They were linguistically, culturally, and often morphologically distinct from the rest of the population; however, they were not a homogenous group. The San remained economically and politically marginalized, have lost access to their traditional land in fertile regions of the country, and were vulnerable to exploitation by their non-San neighbors. Their isolation, ignorance of civil rights, and lack of political representation have stymied their progress. The estimated 52,000 to 65,000 San represented approximately 3 percent of the country's population. Although the San traditionally were hunter-gatherers, most employed San worked as agricultural laborers on cattle ranches that belonged to other ethnic groups. During the year, a substantial proportion of the San resided in government-created Remote Area Dweller settlements and subsisted on government social welfare benefits.

The colonial government established the 20,000-square-mile CKGR in 1961 to protect the food supply of some San groups still pursuing a subsistence hunter-gatherer livelihood; however, by 2001, the Government delivered an ultimatum declaring that all residents of the CKGR would be removed and relocated. The Government continued to provide the San with water, healthcare services, and old age, orphan, and destitute benefits until January 2002, when all public services were terminated, and subsistence hunting licenses were revoked. In April 2002, the Government forcibly resettled all San from the CKGR to the government-created settlement areas of Kaudwane, New Xade, and Xere. The San continued to struggle with the lack of services and opportunities in the relocation areas, and a few have moved back into the CKGR. Settlement sustainability was threatened by the lack of employment opportunities and rampant alcohol abuse. San groups have called for the Government to recognize their land use system and to grant them land rights.

On July 12, the High Court began hearing a case filed by the First People of the Kalahari, an NGO representing the San, against the Government to challenge the constitutionality of the Government's removal of the San from the CKGR into settlements. The case, which the Government announced it would appeal should it lose, was scheduled to resume in January 2005.

President Mogae announced during that year that residents of the CKGR were "allowed to hunt inside the CKGR provided they hunt by traditional means, i.e., hunting on foot using bows and arrows." San who moved out of the CKGR were not allowed to hunt there; however, they were allowed to obtain free Special Game Licenses to hunt in designated areas outside of the CKGR. During the year, 74 such permits were issued to residents of New Xade; however, game was scarce in those areas, and few San used the licenses.

A number of NGOs have made efforts to promote the rights of indigenous people; however, the programs have had limited impact.

Other Societal Abuses and Discrimination

There was strong societal discrimination against persons with HIV/AIDS. In the past, some employers fired HIV-positive employees after learning of their status; however, there were no reports of such activities during the year, according to the Botswana Business Council on HIV/AIDS. On February 26, the Botswana Building Society (BBS) announced that it would no longer require HIV testing as a condition of employment; in October 2003, a BBS employee sued her employer for terminating her services after she refused to undergo an HIV test.

The Government funded community organizations that ran programs to reduce the stigma of HIV/AIDS. President Mogae, who has repeatedly encouraged senior government officials to speak out about HIV/AIDS, announced publicly in 2003 that he tested negative for HIV.

The law prohibits homosexuality.

Section 6 Worker Rights

a. The Right of Association

The Constitution provides for the right of workers' association, and during the year, the Government extended this right to government employees, the only group that had been excluded in the past from joining or organizing unions of their own choosing. The industrial or wage economy was small, and unions were concentrated largely in mineral extraction and to a lesser extent in the railway and banking sectors.

During the year, the President signed a law that rescinded a former government requirement that elected union officials work full-time in the industry of their union representation.

Workers may not be fired for union-related activities. Dismissals on other grounds may be appealed to civil courts or labor officers, which rarely ordered more than 2 months' severance pay.

b. The Right to Organize and Bargain Collectively

The Constitution provides for collective bargaining for unions that have enrolled 25 percent of a labor force; however, only the mineworker and diamond sorter unions had the organizational strength to engage in collective bargaining. The country has only one export processing zone, and it was subject to the same labor laws as the rest of the country.

The law severely restricts the right to strike. Legal strikes theoretically are possible only after an exhaustive arbitration process. Sympathy strikes are prohibited.

On August 22, approximately 1,500 members of the Botswana Mine Workers Union (BMWU) went on strike to protest compensation, the use of expatriate labor, and the pressuring by management of union officials. The Industrial Court ruled the strike illegal, and on September 6, the strikers returned to work.

c. Prohibition of Forced or Compulsory Labor

The Government does not prohibit forced and compulsory labor, including by children; however, there were no reports that such practices occurred.

d. Prohibition of Child Labor and Minimum Age for Employment

Child labor is addressed in the Children's Act; however, some child labor occurred. Only an immediate family member may employ a child age 13 or younger, and no juvenile under age 14 may be employed in any industry without permission from the Commissioner of Labor. No organization has petitioned the Commissioner for such permission. Only persons over age 16 may be hired to perform night work, and no person under age 16 is allowed to perform hazardous labor, including mining.

District and municipal councils had child welfare divisions, which were responsible for enforcing child labor laws; however, no systematic investigation has occurred. The Labor Commissioner; officials of the Ministry of Local Government, Lands, and Housing; and UNICEF generally agreed that child labor was limited to young children in remote areas who worked as cattle tenders, domestic laborers, and child care providers. Childline, a child welfare organization, received 25 reports of child labor during the year.

The law provides that adopted children may not be exploited for labor and protects orphans from exploitation or coercion into prostitution; however, HIV/AIDS has resulted in numerous orphans who were forced to leave school to care for sick relatives and who were vulnerable to such exploitation.

e. Acceptable Conditions of Work

The minimum hourly wage for most full-time labor in the private sector was \$0.64 (2.9 pula), which did not provide a decent standard of living for a worker and family. The Cabinet determined wage policy based on recommendations made by the National Economic, Manpower, and Incomes Committee, which consists of government, BFTU, and private sector representatives. The Ministry of Labor was responsible for enforcing the minimum wage, and each of the country's districts had at least one labor inspector. Civil service disputes were referred to an ombudsman for resolution. Private labor disputes were mediated by labor commissioners; however, an insufficient number of commissioners resulted in 1- to 2-year backlogs in resolving such disputes.

Formal sector jobs generally paid well above minimum wage levels. Informal sector employment, particularly in the agricultural and domestic service sectors, where housing and food were included, frequently paid below the minimum wage. There was no mandatory minimum wage for domestic workers, and the Ministry of Labor did not recommend a minimum wage for them.

The law permits a maximum 48-hour workweek, exclusive of overtime, that is payable at time and a half for each additional hour. Most modern private sector jobs had a 40-hour workweek; however, the public sector had a 48-hour workweek.

The law provides that workers who complain about hazardous conditions may not be fired; however, the Government's ability to enforce its workplace safety legislation remained limited by inadequate staffing and unclear jurisdictions among different ministries. Nevertheless, employers generally provided for worker safety, with an occasional exception in the construction industry.

Illegal immigrants from poorer neighboring countries, primarily Zambians and Zimbabweans, were exploited easily in labor matters, since they would be subject to deportation if they filed grievances against their employers.